REMARKS

Claims 2 - 11, 13 - 23, 25 - 31, and 33 - 41 are currently pending in the instant application. Applicant acknowledges the allowance of claims 2 - 11, 13 - 23, 25 - 31, and 33 - 35. Claims 36 - 41 are rejected on the ground of nonstatutory obviousness-type double patenting. Reconsideration and allowance of claims 36 - 41 in view of the following remarks is respectfully requested.

Claims 36 - 39 are rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 6, and 7 of U.S. Patent No. 6,805,117 to Ho et al. ("the '117 patent"). Claims 40 - 41 are rejected on the ground of nonstatutory obviousness-type double patenting over claims 20, 23, and 24 of the '117 patent.

Applicant submits herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). It should be noted that the filing of the terminal disclaimer to obviate the rejection of claims 36 - 41 based on nonstatutory double patenting is in no manner to be construed as an admission of the propriety of the rejection. (*See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991).)

The Commissioner is authorized to charge the Terminal Disclaimer fee required under 37 C.F.R. § 1.20(d) to Deposit Account No. 50-0558. Two copies of a Fee Transmittal form are submitted for this purpose.

It is believed that all outstanding objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited. If the Examiner is of the opinion that certain aspects of the application are not in condition for allowance, it is respectfully requested that an Advisory Action be mailed immediately and/or that the Examiner contact the applicant at the number listed below.

Respectfully submitted,

By _Richard J. Coldren_

Richard J. Coldren
Reg. No.: 44,084
Tel. No.: (724) 387-4455
Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525